

Opening Statement of the Honorable Fred Upton
Subcommittee on Energy and Power
Hearing on “EPA’s CO2 Regulations for New and Existing Power Plants: Legal
Perspectives”
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(As Prepared for Delivery)

In 2010, during the second year of the Obama administration, a Democratically-controlled Congress failed to pass sweeping cap-and-trade legislation. That flawed scheme was rejected because it would have done far more economic harm than environmental good and people realized that cap and trade was nothing more than an economy-wide energy tax. But now, the EPA is regulating where the administration failed to legislate, issuing final rules for CO2 emissions from new and existing power plants that seek to fundamentally change the way we generate, distribute, and consume electricity here in the United States. For the sake of jobs and affordable energy, these rules must be stopped as the case for cap-and-trade has only gotten worse with time. Today, we continue our review of this expansive regulatory agenda, and focus on the legal concerns with these rules.

Beyond the Constitutional issues of these sweeping measures, these rules take the Clean Air Act in an unprecedented new direction, in which it was never designed to go. In the past, EPA emissions performance standards were technologically achievable. With these rules we are seeing new coal generated electricity effectively banned, costly renewables favored over other sources, and even clean-burning natural gas and nuclear power relegated to a constrained future, this is just plain wrong.

These rules raise significant concerns for states and consumers. Back in Michigan the temperatures are dropping, the lakes are near freezing, and we face another winter. Affordable electricity for heating is absolutely essential for my state, and especially for low-income households and those on fixed incomes. Manufacturers in Michigan and across the country need affordable energy to remain globally competitive – American manufacturers can compete against anybody, except the EPA. One study from NERA estimates that the existing source rule as proposed would boost electric rates in Michigan and 42 other states by double digits, and that is on top of already rising electricity rates due to other onerous EPA regulations. This will deal a crushing blow just as things are looking brighter for manufacturing.

Michigan winters are cold enough that if the electricity goes out, people may be harmed. Despite some acknowledgement of this future by EPA, their rules ensure that reliability concerns remain. This is not surprising, since Congress did not authorize EPA with the responsibility for electric reliability. In contrast, NERC and others with such expertise have warned of serious reliability concerns with the steps EPA insists on taking.

The Ratepayer Protection Act fixes many of the problems with the existing source rule. It restores the state authority envisioned in the Clean Air Act by empowering every governor to waive the provisions of the rule if found to threaten the affordability or reliability of their electricity systems. Under this bill, any state that wishes to go along with EPA’s regulations remains completely free to do so.

These and other legal concerns are not mere technicalities. Quite the contrary, if left unaddressed they could lead to higher electric bills, an increased likelihood of blackouts, and

lost American jobs. The new EPA's regulations on their own do significant damage – but cumulatively they will break the camel's back – that is why our continued work is so important.

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